N. Y. Supp. 647. If the covenant was personal, the quit-claim deed was useless; if it ran with the land, it was ineffective. *Hansell* v. *Downing*, 17 Pa. Super. Ct. 235; *Abby* v. *Goodrich*, 3 Day (Conn.) 433; *Sherwood* v. *Hubbel*, 1 Root 498. Covenants run with the land only when made for the benefit of other land. Where the covenant is made pursuant to a general plan, it runs with the land. *Jackson* v. *Stevenson*, 156 Mass. 496. Where the vendor retains land part of which is sold, the restrictive covenant is construed to be for his personal benefit. *Sharp* v. *Ropes*, 110 Mass. 381, but this again depends upon the circumstances. *In re Birmingham and District Land Co.*, 1 Ch. 342. In England burdens do not run with the land, *Austerberry* v. *Oldham*, 29 Ch. Div. 750, and this has given rise to the doctrine that where one buys land with notice of the existence of a restrictive covenant, equity will enforce the covenant against him even if it does not run with the land. *Tulk* v. *Moxhay*, 2 Ph. 774. This "appears * * * to be * * * an extension in equity of the doctrine in *Spencer's Case* [5 Co. Rep. 16a], to another line of cases, or else an extension in equity of the doctrine of negative easements." *London & S. W. Ry. Co.* v. *Gomm*, 20 Ch. D. 583. And it makes no difference that the one seeking to enforce the covenant did not purchase with reference thereto. *Rogers* v. *Hosegood* [1900], 2 Ch. D. 388.

DAMAGES—EXCESSIVENESS—PERSONAL INJURIES—REMITTITUR.—Plaintiff, a brakeman in the employ of defendant company, was severely injured through the alleged negligence of the defendant's servants. The evidence of negligence was conflicting, and there was a showing that plaintiff had contributed to his injury by failure to exercise due care. Testimony, immaterial and tending to prejudice the jury against defendant, was admitted but later withdrawn. Counsel for plaintiff made improper remarks during argument, failing to confine himself to the evidence; the court ordered his remarks withdrawn, but did not expressly instruct the jury against giving them consideration. Jury awarded the plaintiff a verdict of $50,000. On appeal it was *held*, that the verdict was excessive and a remittitur of $25,000 was awarded. *St. Louis, I. M. & S. Ry. Co.* v. *Brown* (Ark. 1911) 140 S. W. 279.

The Arkansas court in reaching its conclusion concedes that the jury was doubtless influenced by sympathy in arriving at a verdict so unwarranted by the evidence. But the court holds that under such circumstances it is in its discretion to allow the entry of a remittitur in an amount that seems just and reasonable. This ruling is contrary to the weight of authority in this country, and is, in effect, an overruling of the court's prior decisions in *St. Louis, I. M. & S. Ry. Co.* v. *Waren*, 65 Ark. 619; *St. Louis, I. M. & S. Ry. Co.* v. *Adams*, 74 Ark. 326. In these cases it was held that when the evidence is conflicting as to the right to recover, and an excessive verdict has been granted through passion or prejudice, the error cannot be cured by remittitur, but a new trial should be awarded as to the cause in its entirety. This rule has been followed in a majority of the States where the question has been squarely presented for adjudication. *Davis Iron Works Co.* v. *White*, 31 Colo. 82; *Lowenthal* v. *Streng*, 90 Ill. 74; *Atchison* v. *Plunkett*, 61 Kan. 297; *Chitty* v. *St. Louis etc. Ry. Co.*, 148 Mo. 64; *Wainwright* v. *Satterfield*, 52 Neb. 403;

Cassin v. *Delany,* 38 N. Y. 178; *Cleveland etc. Ry. Co.* v. *Himrod Furnace Co.,* 37 Ohio St. 434; *Murray* v. *Leonard,* 11 S. D. 22; *Schultz* v. *Chicago etc. Ry. Co.,* 48 Wis. 375. The reason assigned for the rule is that the passion and prejudice of the jury must have entered into every part of the verdict. *Burdick* v. *Mo. Pac. Ry. Co.,* 123 Mo. 221. And if the court permits the entry of a remittitur in such a case it is, in effect, usurping a function of the jury. *Chicago Terminal Transfer Ry. Co.* v. *Helbreg,* 99 Ill. App. 563. The rule in West Virginia seems to be that a remittitur is proper if the illegal part of the verdict is clearly distinguishable from the rest; if not, a new trial must be granted. *Chapman* v. *Beltz,* 48 W. Va. 1. In Texas the cases are in conflict but the rule last announced is that of the principal case. *Gulf etc. Ry. Co.* v. *Darby,* 28 Tex. Civ. App. 413. In England it is held that the Court of Appeal may not, without the consent of the defendant, fix the amount of the damages which it considers reasonable, and order a new trial unless defendant acquiesces in such reduction. *Watt* v. *Watt,* [1905] A. C. 115. In the United States the consent of the defendant is immaterial, as he is held to have no right to complain of the action of the court in permitting a portion of the verdict to be remitted as a condition of not granting a new trial. *Arkansas Valley Land Co.* v. *Mann,* 130 U. S. 69; *Trischet* v. *Hamilton Mutual Insurance Co.,* 14 Gray 456; *Carter* v. *Beckwith,* 128 N. Y. 312; *Branch* v. *Bass,* 5 Sneed 366; *Vinal* v. *Core,* 18 W. Va. 1; *Corcoran* v. *Harran,* 55 Wis. 120. A dissenting opinion in the principal case strongly endorses the rule followed in most of the jurisdictions that have passed upon the question, and finds no justification for a departure by the majority of the court from its holding in the previous decisions cited *supra.*

Dead Bodies—Burial—Determination of Place.—Plaintiff is the second wife of deceased who settled in South Dakota in 1877 and there attained eminence as a lawyer and public man. In 1905, plaintiff removed to, and became a resident of, Seattle, in the State of Washington, deceased procuring for her a fine house in that city. Deceased visited her three or four times and she came to Dakota about an equal number of times. While deceased was in Seattle visiting plaintiff, his death occurred, and this action was begun against the defendants, funeral directors, who were about to ship the body to South Dakota in accordance with the wishes of two sons of deceased by his first wife. It appeared in evidence that deceased had, in political utterances, asserted his intention to live and be buried in South Dakota, while letters to an adopted child and a declaration alleged to have been made on his deathbed showed an intention and desire to be buried in Washington. *Held,* that the primary right of the wife, instead of the next of kin, to control the burial of her husband, depends upon the special circumstances of the case and, in case of a dispute, the matter must be settled from the inherent equities gathered from the attending facts, which here require a decision in favor of the next of kin. *Wood* v. *Butterworth* (Wash. 1911) 118 Pac. 212.

The point involved here, possibly of little material importance, is of great interest because it borders close on the ever troublesome question of the ownership of a dead body. The Washington court is here asked for the